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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-844]

Steel Concrete Reinforcing Bar from Mexico: Final Affirmative Determination of Circumvention of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: We determine that steel concrete reinforcing bar (rebar) from Mexico that is bent on one or both ends and otherwise meeting the description of in-scope merchandise – if produced and/or exported by Deacero S.A.P.I. de C.V. (Deacero) to the United States – is circumventing the antidumping duty order on rebar from Mexico.

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Jonathan Hall-Eastman, Office III, Antidumping and Countervailing Duty Operations, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1468.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 2014, the Department of Commerce (Commerce) published the antidumping duty (AD) *Order* on rebar from Mexico.¹ On October 18, 2019, in response to a

¹ See *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014) (*Order*).

request from the Rebar Trade Action Coalition (the petitioner),² Commerce initiated a circumvention inquiry into whether imports of otherwise straight rebar bent on one or both ends (also referred to as hooked rebar) that is produced and/or exported to the United States by Deacero and otherwise meeting the description of in-scope merchandise, constitutes merchandise “altered in form or appearance in minor respects” from in-scope merchandise that should be considered subject to the AD *Order* on rebar from Mexico.³ On March 18, 2020, Commerce published the *Preliminary Determination* of the anti-circumvention inquiry into Deacero’s hooked rebar.⁴ For a full description of the issues raised by parties for this final determination, see the Issues and Decision Memorandum.⁵

Scope of the Order

The merchandise subject to this *Order* is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010.

The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0017, 7221.00.0018, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085,

² See Petitioner’s Letter, “Steel Concrete Reinforcing Bar from Mexico: Request for Scope Ruling or, Alternatively, an Anti-Circumvention Ruling,” dated September 3, 2019.

³ See *Steel Concrete Reinforcing Bar from Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order*, 84 FR 58132 (October 30, 2019), and accompanying Initiation Memorandum.

⁴ See *Steel Concrete Reinforcing Bar from Mexico: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 85 FR 15430 (March 18, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

⁵ See Memorandum, “Final Affirmative Circumvention Decision Memorandum Concerning Certain Hooked or Bent Steel Concrete Reinforcing Bar Produced and/or Exported by Deacero S.A.P.I. de C.V (Deacero),” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.*, mill mark, size or grade) and without being subject to an elongation test. HTSUS numbers are provided for convenience and customs purposes, however, the written description of the scope remains dispositive.

Scope of the Circumvention Inquiry

The merchandise subject to this circumvention inquiry consists of otherwise straight steel concrete reinforcing bar bent on one or both ends and otherwise meeting the description of in-scope merchandise under the *Order* produced and/or exported by Deacero from Mexico to the United States.

Statutory and Regulatory Framework

Commerce reached this anti-circumvention determination under section 781(c) of the Tariff Act of 1930, as amended (the Act), which deals with minor alterations of merchandise. For a full description of the methodology underlying our conclusions, *see* the Issues and Decision Memorandum.⁶

Final Affirmative Determination

We determine, pursuant to section 781(c) of the Act that hooked rebar produced and/or exported to the United States by Deacero constitutes merchandise “altered in form or appearance in minor respects” that should be considered within the class or kind of merchandise subject to the *Order*.

⁶ *Id.*

Suspension of Liquidation

As stated above, Commerce has made an affirmative finding of circumvention of the *Order* with respect to hooked rebar produced and/or exported by Deacero. In accordance with 19 CFR 351.225(l)(2), we will direct U.S. Customs and Border Protection (CBP) continue to suspend liquidation of entries of otherwise straight steel concrete reinforcing bar bent on one or both ends and otherwise meeting the description of in-scope merchandise under the *Order*, if such entries are (1) produced and/or exported to the United States by Deacero, and (2) entered, or withdrawn from warehouse, for consumption on or after October 18, 2019, the date of the initiation of this inquiry. Pursuant to 19 CFR 351.225(l)(2), we will also instruct CBP to continue to require a cash deposit of estimated duties equal to the AD rate in effect for Deacero for each such unliquidated entry. The suspension of liquidation instructions remains in effect until further notice.

Hooked rebar produced and/or exported by Deacero that has been sold in connection with a specific, identified construction project and produced according to an engineer's structural design, consistent with industry standards, is not subject to this inquiry. However, imports of such merchandise are subject to certification requirements, and cash deposits may be required if the certification requirements are not satisfied. Accordingly, if an importer imports hooked rebar from Mexico produced and/or exported by Deacero and claims that the hooked rebar has been sold in connection with a specific, identified construction project and produced according to an engineer's structural design, consistent with industry standards, the importer is required to meet the certification and documentation requirements described in Appendices II and III. In the situation where the importer has not maintained the requisite certification, Commerce will

instruct CBP to suspend the entry and collect cash deposits at the rate in effect for Deacero at the time of entry.

Notification Regarding Administrative Protective Orders

This notice will serve as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This final affirmative circumvention determination is in accordance with section 781(c) of the Act and 19 CFR 351.225(f).

Dated: May 29, 2020.

Jeffrey I. Kessler,
Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Final Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Merchandise Subject to the Anti-Circumvention Inquiry
- V. Discussion of the Issues
 - Comment 1: Whether Deacero's Hooked Rebar was Seen as Straight Rebar
 - Comment 2: First Prong of the Minor Alteration Analysis – Overall Physical Characteristics
 - Comment 3: Second Prong of the Minor Alteration Analysis – Expectations of Ultimate Users
 - Comment 4: Third Prong of the Minor Alteration Analysis – Use of Merchandise
 - Comment 5: Fourth Prong of the Minor Alteration Analysis – Channels of Marketing
 - Comment 6: Fifth Prong of the Minor Alteration Analysis – Cost of Modification
 - Comment 7: Whether Commerce Should Modify the Certification Requirement to Allow Deacero to Certify Hooked Rebar Not Directly Connected to Construction Projects and/or to Allow Deacero to Complete the Certification Within a “Reasonable” Number of Days After Entry
- VI. Recommendation

Appendix II

Certification Requirements

If an importer imports otherwise straight rebar bent on one or both ends (hooked rebar) from Mexico produced and/or exported by Deacero and claims that the hooked rebar has been sold in connection with a specific, identified construction project and produced according to an engineer's structural design, consistent with industry standards, the importer is required to complete and maintain the importer certification attached hereto as Appendix III and all supporting documentation. Where the importer uses a broker to facilitate the entry process, the importer should obtain the entry summary number from the broker. Agents of the importer, such as brokers, however, are not permitted to make this certification on behalf of the importer.

For entries on or after the date of publication of this notice in the *Federal Register*, for which certifications are required, importers should use the certification contained in Appendix III and should complete the required certification at or prior to the date of Entry Summary.

The importer is also required to maintain sufficient documentation supporting its certifications. The importer will not be required to submit the certifications or supporting documentation to U.S. Customs and Border Protection (CBP) as part of the entry process at this time. However, the importer will be required to present the certifications and supporting documentation to Commerce and/or CBP, as applicable, upon request by the respective agency. Additionally, the claims made in the certifications and any supporting documentation are subject to verification by Commerce and/or CBP. The importer is required to maintain the certification and supporting documentation for the later of: (1) a period of five years from the date of entry,

or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.

In the situation where no certification is provided for an entry, Commerce intends to instruct CBP to suspend liquidation of the entry and collect cash deposits at the rate applicable to Deacero for subject merchandise.

Appendix III

IMPORTER CERTIFICATION

I hereby certify that:

A) My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {IMPORTING COMPANY};

B) I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the otherwise straight rebar bent on one or both ends (hooked rebar) from Mexico produced and/or exported by Deacero S.A.P.I. (Deacero) that entered under entry summary number(s), identified below, and which are covered by this certification. "Direct personal knowledge" for purposes of this certification refers to facts in records maintained by the importing company in the normal course of its business.

C) The hooked rebar covered by this certification was produced and/or exported by Deacero.

D) If the importer is acting on behalf of the first U.S. customer, complete this paragraph, if not put "NA" at the end of this paragraph:

The hooked rebar from Mexico produced and/or exported by Deacero covered by this certification was imported by {NAME OF IMPORTING COMPANY} on behalf of {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.

E) The hooked rebar from Mexico produced and/or exported by Deacero covered by this certification was shipped to {NAME OF PARTY TO WHOM MERCHANDISE WAS FIRST SHIPPED IN THE UNITED STATES}, located at {ADDRESS OF SHIPMENT}.

F) I have personal knowledge of the facts regarding the production of hooked rebar from Mexico produced and/or exported by Deacero identified below. "Personal knowledge" includes facts obtained from another party (*e.g.*, correspondence received by the importer from the producer regarding the country of manufacture of the imported products).

G) The hooked rebar from Mexico was produced and/or exported by Deacero.

H) The imports of hooked rebar have been sold in connection with a specific, identified construction project and produced according to an engineer's structural design, consistent with industry standards.

I) This certification applies to the following entries (repeat this block as many times as necessary):

Producer:
Exporter:
Entry Summary #:
Entry Summary Line Item #:
Invoice #:
Invoice Line Item #:

J) I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, mill certificates, production records, invoices, *etc.*) for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries.

K) I understand that {NAME OF IMPORTING COMPANY} is required to provide this certification and supporting records, upon request, to U.S. Customs and Border Protection (CBP) and/or the Department of Commerce (Commerce).

L) I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

M) I understand that failure to maintain the required certifications, and/or failure to substantiate the claims made herein, and/or failure to allow CBP and/or Commerce to verify the claims made herein, may result in a determination that all entries to which this certification applies are within the scope of the antidumping duty order on steel concrete reinforcing bar from Mexico. I understand that such finding could result in:

- i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;
- ii) the requirement that the importer post applicable antidumping duty cash deposits (as appropriate) equal to the rates determined by Commerce; and
- iii) the revocation of {NAME OF IMPORTING COMPANY}'s privilege to certify future imports of steel concrete reinforcing bar from Mexico.

N) I understand that agents of the importer, such as brokers, are not permitted to make this certification.

O) This certification was completed at or prior to the time of entry summary.

P) I am aware that U.S. law (including, but not limited to, 18 U.S.C. §1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government.

Signature

NAME OF COMPANY OFFICIAL

TITLE

DATE

[FR Doc. 2020-12261 Filed: 6/5/2020 8:45 am; Publication Date: 6/8/2020]